IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 3979 of 2005()

CC.46/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEDUMANGAD

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PETITIONER: 2ND ACCUSED.

DR.A.G.MURALEEDHARAN NAIR,
IYKARA PHARMACEUTICALS, THANKAM VEEDU,
KIZHAKKE KALLADA, KOLLAM.

BY ADV. SRI.K.KARTHIKEYA PANICKER
SMT.DAYA K. PANICKER

RESPONDENTS: COMPLAINANT AND STATE.

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1. THE EXCISE INSPECTOR, VAMANAPURAM
EXCISE RANGE, VAMANAPURAM.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3979 of 2005

Dated this the 20th day of February, 2007

ORDER

The petitioner is the 2nd accused in a prosecution under the provisions of the Kerala Abkari Act. The crux of the allegations raised by the prosecution in the final report filed before the learned Magistrate is that the 1st accused was found in possession of preparations containing alcohol without any requisite legal authority. It was further alleged that those preparations were manufactured and marketed by the petitioner, who did not have the requisite legal authority to manufacture and market them. Cognizance has been taken by the learned Magistrate. The proceedings are pending before the Judicial First Class of the Magistrate-II, Nedumangad. The 1st accused has already pleaded guilty. He has been convicted and sentenced also.

2. The petitioner has come to this Court with a prayer that proceedings against him may be quashed invoking the powers under Section 482 Cr.P.C. What is the reason ? The petitioner contends that his alleged conduct of manufacturing and marketing the preparations is not an offence under law in as much as he has the requisite legal authority to manufacture and market such preparations. The Investigator did not take pains to ascertain

whether the petitioner has the requisite legal authority/permit/licence to manufacture and market the preparations in question. Mind was not applied by the Investigating Officer to this aspect of the matter. The petitioner therefore could not make the relevant documents available to the Investigating Officer. The petitioner is prepared to produce original documents before the Investigating Officer or before this Court or the learned Magistrate. He may be spared of the undeserved trauma of this prosecution when he does possess the requisite legal authority/licence/permit to manufacture and market the preparations in respect of which the prosecution is launched.

3. The original documents have not been produced before this Court. The learned Public Prosecutor submits that at no time was such documents made available for the perusal of the Investigating Officer.

4. I am, in these circumstances, satisfied that the ideal course that can be followed by this Court is to direct the Investigating Officer to conduct further investigation under Section 173(8) Cr.P.C. The petitioner shall be given liberty to produce all such legal authority/licence/permit, which he allegedly has to manufacture and market the preparations in question. After considering such material, the Investigating Officer shall file further report before the learned Magistrate under Section 173(8) Cr.P.C.

5. In the result:

i) This Crl.M.C is, allowed in part.

ii) The Investigating Officer is directed to conduct further investigation under Section 173(8) Cr.P.C.

iii) The petitioner shall be at liberty to produce all such documents which he allegedly has to justify his conduct of manufacturing and marketing the preparations in question before the Investigating Officer, within a period of 30 days from this date.

iv) The further report under Section 173(8) Cr.P.C shall be filed by the Investigating Officer within a period of 60 days.

v) The learned Magistrate shall not continue with the proceedings till 30.04.2007. In the meantime, furtherl report shall be filed and decision shall be taken by the learned Magistrate of the further course of action on the basis of such further report.

(R.BASANT, JUDGE)

rtr/-